FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

December 23, 2003

In Reply Refer To:
Texas Eastern Transmission, LP
Docket No. RP02-494-003

Texas Eastern Transmission, LP
P.O. Box 1642
Houston, Texas 77251-1642

Attention: David A. McCallum
Director, Rates and Tariffs

Reference: Second Substitute First Revised Original No. 533A
and Original Sheet No. 533B to
FERC Gas Tariff, Seventh Revised Volume No. 1

Dear Mr. McCallum:

1. On February 19, 2003, Texas Eastern Transmission, LP (Texas Eastern) submitted the above referenced tariff sheets in compliance with the Commission order issued on February 6, 2003 (the February 6 Order).[1] The Commission accepts the referenced tariff sheets effective October 1, 2002, subject to conditions as detailed below. Texas Eastern is directed to file revised tariff sheets within 15 days of the date of this order.

Background

2. In the February 6 Order the Commission conditionally accepted certain tariff sheets, and required Texas Eastern to file revised tariff sheets clarifying that the partial day release quantity is calculated as the difference between the Maximum Daily Quantity (MDQ) on the Releasing Customer's contract and the amount scheduled by the Releasing Customer, as determined using the standards promulgated by the North American Energy Standards Board (NAESB).

Details of the Instant Filing

3. Texas Eastern notes that in the February 6 Order, the Commission rejected certain alternate tariff sheets, explaining that "[I]f either the releasing or replacement shipper flows more than their allocated MDQ during the gas day, they would be responsible for

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[1] 102 FERC ¶ 61,152 (2003).

paying the overrun rate . . . for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties." Further, Texas Eastern notes that the Commission acknowledges it has authorized pipelines to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and higher penalties for overruns during critical periods. Texas Eastern states that the Commission recognized in the February 6 Order that such overrun charges and penalties are designed to deter shippers from obtaining capacity free of charge in excess of contractual quantities. Texas Eastern contends by suggesting that the pipeline is "fully protected" if the shipper actually flows gas above its contract demand, the February 6 Order appears to contemplate that Texas Eastern' tariff already contains a mechanism by which releasing and replacement shippers that overrun the contractual MDQ in a capacity release situation are charged for the extra transportation and penalized to the extent the overrun occurs during a critical period. Texas Eastern asserts that its tariff currently does not contain such a mechanism.

4. Texas Eastern states that to implement the partial day release quantity definition required by the Commission and consistent with the Commission's stated policy of protecting the pipeline from the unauthorized delivery of total quantities that exceed the MDQ on the Releasing Customer's contract, Texas Eastern is proposing to incorporate into Section 3.14(D)(3)(c) of the GT&C overrun charges and penalties that are specifically applicable to the capacity release situation. Shippers who overrun the contractual MDQ on the Releasing Customer's contract will be required to pay for the transportation costs associated with that overrun, as well as associated penalties for overruns in times of restricted capacity.

5. Additionally, Texas Eastern is proposing to incorporate into Section 3.14(D)(3)(b) of the GT&C, the following language:

> If on the day of a partial day release the Releasing Customer's existing scheduled quantity exceeds the MDQ remaining on the original contract after the award of the partial day release, then the Releasing Customer must reduce its nominated quantity to a quantity that is equal to or less than the MDQ remaining on the original contract.

Public Notice, Interventions and Protests

6. Public notice of the filing was issued on February 21, 2003, with interventions and protests due on or before March 3, 2003. Pursuant to Rule 214 (18 C.F.R. § 385.214 (2003)), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. ProLiance Energy, LLC (ProLiance); the East Ohio Gas Company d/b/a Dominion East Ohio and The Peoples Natural Gas Company d/b/a Dominion Peoples (jointly, the Dominion LDCs); and, Consolidated Edison Company of New York, Inc. and Orange and Rockland Utilities,

Inc. (jointly, ConEd) filed protests, to which Texas Eastern filed an answer.[2] The details of the protests and Texas Eastern's answer are discussed below.

7. ProLiance and the Dominion LDCs protest that Texas Eastern' proposal to add new language in Section 3.14(D)(3)(b), and to propose new overrun charges and penalties in Section 3.14(D)(3)(c), goes beyond the scope of the February 6 Order, and violates Section 154.203(b) of the Commission's regulations. Section 154.203(b) states that "[f]ilings made to comply with Commission orders must include only those changes required to comply with the order." ProLiance and the Dominion LDCs assert that the February 6 Order did not require Texas Eastern to propose the new language in Section 3.14(D)(3)(b), or the partial-day release penalties in Section 3.14(D)(3)(c).

8. ConEd requests that the Commission not permit Texas Eastern to impose the new penalties in proposed in Section 3.14(D)(3)(c) on a retroactive basis back to October 1, 2002.

9. With regard to ProLiance and the Dominion LDCs protest that portions of the instant filing are outside the scope of a compliance filing and thus violate 18 C.F.R. § 154.203(b), Texas Eastern asserts that Sections 3.14(D)(3)(b) and 3.14(D)(3)(c) are necessary and appropriate. Texas Eastern states that should the Commission find that any portion of the instant filing is outside the scope of a compliance filing, Texas Eastern notes that the Commission in the past has waived 154.203(b) for good cause shown. Texas Eastern submits that good cause exists here because, if Texas Eastern is not permitted to implement an overrun charge and penalty in the context of its compliance filing, it will not have the ability to utilize the only method identified by the Commission in the February 6 Order for discouraging overruns in a partial day release transaction. Texas Eastern concludes that if the Commission denies Texas Eastern the right to implement the MDQ overrun penalty in this proceeding, Texas Eastern will not be protected from the potential harm associated with shippers overrunning their respective MDQs in capacity release situations.

10. With regard to ConEd's request that the Commission not permit Texas Eastern to impose the new overrun penalties on a retroactive basis, Texas Eastern states it is willing to waive any charges resulting from the implementation of Section 3.14(D)(3)(c) and the date of the order approving this section.

Discussion

11. ProLiance and the Dominion LDCs protest Texas Eastern' proposal to add new language in Section 3.14(D)(3)(b), claiming that the provision is beyond the scope of the February 6 Order. Section 3.14(D)(3)(b) provides that in the event that a release

[2] Although answers to protests are not permitted by Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), the Commission finds good cause to waive the rule as Texas Eastern's answer may aid in the disposition of the issues raised by its filing

transaction would result in exceeding the releasing shipper's MDQ for that day, Texas Eastern will reduce the releasing shipper's nomination so that the combined MDQ of the releasing and replacement shipper will not exceed the MDQ.

12. The Commission finds that this section is within the scope of compliance with the February 6 Order. The predicate of the February 6 Order was that a releasing shipper can only release the difference between its MDQ and the amount of capacity it is using for its own purposes.[3] If the releasing shipper attempts to implement a release transaction that would exceed the MDQ of the underlying contract, Texas Eastern is not obligated to accept or schedule the release.[4] The pipeline, therefore, has two choices: it can choose not to permit the release, or it can obligate the releasing or replacement shipper to reduce its contract quantity so that the combined MDQ does not exceed the MDQ on the original contract. The Commission, therefore, finds that Texas Eastern's proposed new language in Section 3.14(D)(3)(b) is consistent with the Commission's findings in the February 6 Order, and reasonably places the responsibility for adjusting nominations on the Releasing Shipper so that the aggregate of the Releasing Shipper and the Replacement Shipper's contract quantities for the day does not exceed the MDQ.[5] Accordingly, the Commission denies the protest by ProLiance and the Dominion LDCs.

13. With regard to the protest by ProLiance and the Dominion LDCs that Texas Eastern' proposal to add new overrun charges and penalties associated with partial day releases, is beyond the scope of the February 6 Order, in that Order the Commission found that Texas Eastern was incorrect in contending that it would be required to deliver more than the contract demand in the original contract for partial day releases. If either the releasing or replacement shipper flowed more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate (interruptible transportation rate) for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties. The Commission further noted that "[T]hese are the same provisions that apply to any shipper overrunning its contract demand (regardless of whether it is engaged in a release transaction), and Texas Eastern has offered no justification for treating releasing shippers differently in this respect than other shippers." Finally, the Commission found that the pipeline would be "fully protected" if a releasing or replacement shipper exceeded the contractual demand, noting that "[T]he shipper exceeding its MDQ would be responsible for paying the added transportation

[3] 102 FERC ¶ 61,152, at P 22, n.13.

[4] See 102 FERC ¶ 61,152, at P 31 (pipeline need not schedule transactions that are not available or exceed hourly flow limitations in its tariff).

[5] Only the releasing shipper is in possession of the information showing that its nominations in conjunction with the release would exceed the MDQ under its contract. Therefore, it is not unreasonable for Texas Eastern to hold the replacement shipper harmless for the error, and instead reduce the releasing shippers nominated quantities to ensure that the overall release transaction falls within contract demand.

costs plus any additional overrun, scheduling, or imbalance penalties that result from such action. For example, the Commission has authorized pipelines to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and even higher penalties for overruns during critical periods."

14. In the February 6 Order, therefore, the Commission found that that the pipeline's existing provisions regarding contract overruns would protect it against contract overruns in the case of partial day releases, in the same way as these provisions protect the pipeline against contract overruns in all other situations. The Commission stated that the overrun charge for partial day releases should be the same as that applied in other contexts:

> If either the releasing or replacement shipper flows more than their allocated MDQ during the gas day, they would be responsible for paying the overrun rate (interruptible transportation rate) for all gas above their MDQ and would also be subject to potential overrun, scheduling or imbalance penalties. These are the same provisions that apply to any shipper overrunning its contract demand (regardless of whether it is engaged in a release transaction), and Texas Eastern has offered no justification for treating releasing shippers differently in this respect than other shippers.[6]

15. The February 6 Order required simply that Texas Eastern apply the generally applicable NAESB scheduling standards for all transactions to partial day releases.[7]

16. Texas Eastern's tariff does not provide for overrun charges or penalties for any contract demand overrun unless a customer has violated a curtailment or interruption order. Section 4.2(G)(2) of its GT&C sets forth a penalty for unauthorized overrun quantities equal to "three times the daily Gas Daily posting for the day on which the violation occurred" but not to exceed $25 per Dth.[8] The Commission finds that if a party to a partial day release exceeds the limits set in a curtailment or interruption order, then the overrun charge mechanism set forth in Section 4.2(G)(2) should be applied. If Texas Eastern's tariff does not provide for overrun charges and penalties for contract overruns that occur in the absence of a curtailment or interruption order, Texas Eastern cannot treat contract overruns associated with partial day releases any differently than other contract overruns.

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[6] 102 FERC ¶ 61,145, at P 25.

[7] The reference in the order to the ability of the pipeline to charge twice the interruptible transportation rate for unauthorized overruns during non-critical periods and even higher penalties for overruns during critical periods was simply an example of the type of contract overrun provisions the Commission has approved in Order No. 637 proceedings.

[8] See Tariff Sheet No. 559.

17. Inasmuch as the Commission is rejecting Texas Eastern's proposed new overrun charges and penalties, ConEd's request that the Commission not permit Texas Eastern to impose the new penalties on a retroactive basis is denied as moot.

18. Consistent with the discussion above, Texas Eastern is directed to refile the referenced tariff sheets, removing its proposal to add an MDQ Overrun Charge and the MDQ Overrun Penalty. The referenced tariff sheets are accepted, effective October 1, 2002, subject to this condition. Texas Eastern is directed to file its revised tariff sheets within 15 days of the date of this order.

By direction of the Commission.

Linda Mitry,
Acting Secretary.

cc: Steven E. Hellman, Assistant General Counsel
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